

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 06-0222P
Individual Income Tax
For the Calendar Year 2003**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing and payment of a calendar year income tax return for the year 2003. The taxpayer is an individual residing in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the return was late due to eminent domain.

The taxpayer had his business displaced due to eminent domain. The Indiana statutes allow a taxpayer to find a replacement property without paying income tax on the gain that results from eminent domain. The taxpayer looked for replacement property, but by the time the taxpayer realized no replacement property could be found, time had elapsed for paying the 2003 individual income taxes on time. As such, the taxpayer was late filing and paying his 2003 income taxes.

The Department points out the taxpayer could have paid an estimate at the original due date and requested a refund later if the taxpayer found a replacement property.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,
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Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.